



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Metalcastello s.r.l.--Reconsideration and
Claim for Protest Costs

File: B-240639.4; B-240820.3

Date: May 15, 1991

Richard P. Diehl, Esq., for the protester.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Request for reconsideration and claim for protest costs are denied where awardee's protest against an alleged improper auction was properly dismissed as academic because the awardee's contracts were unaffected by the protest of another firm against the award to the awardee.

DECISION

Metalcastello s.r.l. requests reconsideration of our decision in Diverco, Inc; Metalcastello s.r.l., B-240639.2 et al., Dec. 21, 1990, 70 Comp. Gen. ___, 90-2 CPD ¶ 512, which dismissed its protests of the agency's decisions to reopen discussions and solicit best and final offers (BAFO) under request for proposals (RFP) Nos. DLA700-90-R-0211 (-0211) and No. DLA700-90-R-0437 (-0437), issued by the Defense Construction Supply Center (DCSC). That decision also sustained the protests of Diverco, Inc., against the awards to Metalcastello on another ground. Metalcastello argues that our decision to sustain Diverco's protests in effect sustained Metalcastello's protests as well because a mutual issue was presented in both protests, that is, both firms protested that the reopening of discussions constituted an illegal auction. Metalcastello also claims it is entitled to the costs of filing and pursuing the protests, including attorneys' fees.

We deny the request for reconsideration and the claim for costs.

Diverco filed the first protest of this procurement contending that DCSC improperly awarded contracts to Metalcastello under these RFPs because Metalcastello's proposals did not comply with clause I-81 of the RFPs,

"Required Sources for Forging and Welded Shipboard Anchor Chain Items Used for Military Application for Combat and Direct Combat Support Items" (Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 252.208-7005 (1988 ed.)).^{1/} In response to this protest, the agency decided that clause I-81 should not be applied. DCSC proposed to amend the solicitations to delete clause I-81 and to reopen discussions so that offerors could compete on an equal basis. Both Diverco and Metalcastello protested this proposed action as an improper auction since all offerors' prices had been exposed. DCSC again changed its position, determining that clause I-81 was applicable, but asserted that the Metalcastello awards should not be disturbed since the items were urgently needed and the termination costs could be substantial.


Our decision only addressed the remaining issues raised by Diverco as to whether clause I-81 was applicable and the awards to Metalcastello under Nos. -0437 and -0211 were proper. We found that clause I-81 was applicable to these procurements and that the awards to Metalcastello were improper since Metalcastello's proposal did not indicate that it would comply with clause I-81. Although we did not recommend termination of these contracts, we awarded Diverco its proposal and protest costs since we sustained its protest that the Metalcastello awards were improper. We did not resolve either Diverco's or Metalcastello's contention that an illegal auction was conducted because those matters were academic, and no useful purpose would have been served by considering them.

Metalcastello argues, however, that we should award it the costs of filing its protest, including attorneys' fees, based upon principles of equity, since it did nothing to provoke the agency's alleged improper actions and Metalcastello was forced to file the protests. However, Metalcastello's proposal was clearly nonconforming to the RFPs containing clause I-81, such that its protest of DCSC's proposed corrective action would have been denied. In any case, under our Bid Protest Regulations in effect at the time of the protests, a protester is not entitled to recover the costs of pursuing a protest where the protest is dismissed as academic and we therefore do

^{1/} Clause I-81 generally requires all end items and components to contain domestic forgings manufactured in the United States or Canada.

not issue a decision on the merits. See Global Imaging, Inc.
--Recon., Claim for Protest Costs, B-241035.2, Dec. 5, 1990,
90-2 CPD ¶ 450.

The request for reconsideration and the claim for costs are denied.


for James F. Hinchman
General Counsel